

☞ **05hr_SSC-DNRRRR_Misc_pt03b**



☞ **These materials were grouped together (in one envelope).**

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2005-06

(session year)

Senate Select

(Assembly, Senate or Joint)

Committee on ... DNR (SSC-DNRRRR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (July/2012)

James Paul Theyerl
4123 CTH B
Manitowoc, Wi 54220

RE; Final Notice to Senate and Assembly Judiciary Committees

Attention: Committee chairpersons

Senator David A. Zien Senate Judiciary Chairman
Room 15 South State Capitol
P.O. Box 7882
Madison, WI 53707-7882
Postal Certification # 7003-1680-0004-7789-5454

Representative Mark Gundrum Assembly Judiciary Chairman
Room 19 North State Capitol
P.O. Box 8952
Madison, WI 53708-8952
Postal Certification # 7003-1680-0004-7789-5461

August 9, 2004

Gentleman:

It is coming up on six months passage of time since you both received notice, Senator Zien by Postal Certification # 7002-0860-0007-7741-3066 and representative Gundrum by Postal Certification # 7002-0860-0007-7741-3011, and neither of you gentlemen have extended even the common courtesy of acknowledgment of being in receipt of the same.

This is final notice to you that you have a statutory duty as well as a contractual duty that you have entered into with the people of this state, your solemn oath to uphold the laws of this state, prior to assuming your respective roles in elective office, anything less than that, is in violation of Wis Statute 946.12, **Misconduct in Public Office**.

Your contractual duty should be self explanatory, I sure that neither of you will deny taking the oath prior to assumption of your respective office, either as senator, or in representative Gundrum's case, being also a card carrying member of the Wisconsin Bar Association. (SCR 40.15.) Your statutory duty is at 757.85 (1) (a) of the current State Statutes. You will notice the word "**SHALL**" is present in the wording of the above referenced statute. So you have no discretionary authority to summarily cast a blind eye and deaf ear to the affidavit of probable cause sent to the judicial commission and Office Of Lawyer Regulation.

In the event that you believe that you can do just that, then I will now reference SCR 99.01 (14) *Mandatory or Permissive Actions*. The use of "Shall" means an action is mandatory, and no further explanation should be necessary to prompt an immediate investigation into misconduct in public office charges against Manitowoc County officials.

The judicial commission and Office Of Lawyer Regulation have been presented with an affidavit of probable cause, and I am not aware of any facts that suggest that affidavit have been rebutted by any party. FRCP rule 55 allow for entry of a default judgment against any party who failed to plead or otherwise defend, the very least these bodies should be doing is, asking these officials against whom certain allegations have been made, come forth with clear and convincing evidence to rebut the allegations of mis-conduct. Or provide where in the laws or statutes they are exempt from compliance with the rules and regulations as set out by the legislative branches of government.

I'm fully confident that I can demonstrate to the extent necessary, of my right to a cause of action against all parties and actors, impersonator individuals;

First: those individuals had a duty to perform either through statutory mandates, or contractual covenants, oaths of office,

Second: those individuals are in breach of the requirements as established by the legislative bodies of this state, declaring themselves above the Rule Of Law,

Third: Damages to my name and reputation are ongoing to this very day, as well as the continual harassment and misinformation being put into certain files.

The above third cause of action brings me to this statement. There is apparently some allegation being put forth by DNR agents that I have made certain threats against them. This is totally unfounded and not true, as I have never made any such statements. I further want to know when, where and against whom these supposed acts by me were made. This may be of critical importance to Senator Leibham, as I suspect this falsehood could have originated from your office, and an apology is expected along with correction of certain files in possession of Manitowoc County Sheriff's Dept. The response to my FOIA requests, (Manitowoc County Sheriff's Dept) suggests that all these matters were discussed with various DNR personnel, and not by anything specifically said or done by me. Undoubtedly this information is being placed there to be used by the DNR agents on their next unlawful escapade into pillage and plunder over my rights and property.

All parties have the option to be excluded from misconduct charges or be included into the same, either separately, or collectively as willing participants in a State or Federal civil RICO action which is now being contemplated. This remedy may be the only alternative I have available to me, to stem the tide of mis-conduct from people whom declare themselves to be above the Rule Of Law.

Sincerely,

CC; Senator Leibham,
Manitowoc County Sheriff, Kenneth J. Petersen
William H Levit, Jr; Chairperson
James C Alexander; Ex Director
All by first class mail with return service requested.

James Paul Theyerl
4123 CTH B
Manitowoc, WI 54220

Postal Certification # 7002-0860-0007-7739-2842
Date mailed _____

Senator Joseph K. Leibham
Room 409 South State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Leibham,

I don't know what purpose you have for contacting me about certain happenings here in Manitowoc County, but since you have made contact regarding this matter, it is only logical to conclude that the judiciary chairs and you are aware of the seriousness of the allegations, and what is expected. I know that you are senator for the 9th Senate District but I 'm wondering what your motive is for making a response, when it appears you have no connection to the senate judiciary committee. Maybe it's your responsibility to initiate impeachment proceedings, I don't know! If you are sincere about providing any assistance in regards to beginning this process, I will listen if you have my best interest at issue. But that must be on paper, not the mode you suggest in your correspondence.

My complaints of misconduct in public office have been lodged with the proper chairpersons of judiciary committees of the senate and assemble. I was expecting to receive notification from either of them in regards to the formation of a committee or body to make a formal investigation into the matter. I have followed the procedure to make a petition for a remedy in the statutory scheme of things, and all these officials totally ignore the rules of the Supreme Court and the legislative bodies.

Article 1: Section 4, of the Wisconsin Constitution grants the people the right to petition their government for redress shall never be abridged. Supreme Court Justice Abrahamson; in my opinion has already made that abridgement by refusing to activate even a simple investigation thru its enforcement agencies when given notice of criminal misconduct. It would appear Supreme Court Justice Abrahamson and other court officials have abrogated the misconduct in public office statutes 946.12 The principal of accountability for misconduct of public officials appears to have been declared to be unobtainable by any injured party in this state.. If this is a matter of fact, it should be a matter of grave concern to these committee chairmen.

Judging by the things that have occurred here in the purported "justice department " of the STATE and MANITOWOC COUNTY, the STATE Courts including Supreme Court are out of control and beyond being controlled by the state legislatures, abrogating two whole branches of the republic state government. If the very officials charged with upholding the laws of Wisconsin, can ignore the rules of engagement as established by the two branches of government " a government of the people"(republic government) no longer exists in the geographical area generally designated as Wisconsin. A fundamental breach of the Supreme law of the land, The Constitution of the United States Article 4: Section 4, has been committed by

officials of the STATE and MANITOWOC COUNTY court system, by usurpation of powers not delegated to them.

Article 1: Section 9, of the Wisconsin Constitution declares that every person is entitled to a remedy for wrongs and injuries, without the obligation to purchase it, completely and without denial, **promptly and without delay**, conformably to the laws.

This course of action (impeachment) is necessary for the commissions in their respective bodies to retain control of their legislative functions. The only way for that to happen is to initiate impeachment proceedings against all parties who declare themselves above the Rule Of Law. Such conduct is a material breach of good behavior, and oath of office promise, the Supreme Court has already declared itself to be AWOL on this matter, leaving this matter to be addressed by these committees within the house and senate.

I was in the process of generating a second NOTICE to the judicial chairs when I received your correspondence, I was about to notify them that I expect a written notification as to what is going to be done to correct the unlawful conduct of these government employees. They were given notice of felony criminal activity on March 10, 2004, **and I demand and expect some action.**

I incorporate here by reference the notice the judiciary chairmen received on March 10, 2004 with the same force and effect as if incorporated verbatim herein.

If nothing is returned in written form within 30 days from the above date of March 10, I will simply conclude they, and you wish to be a party to felony misconduct. Since you have contacted me, you now have the responsibility to forward this to the judiciary chairpersons who have apparently made contact with you.

Thank you.

James Paul Theyerl
4123 CTH B
Manitowoc, Wi 54220

Postal Certification # 7002-0860-0007-7741-4179
Date mailed _____

Senator Joseph K. Leibham
Room 409 South State Capitol
P.O. Box 7882
Madison, WI 53707-7882

RE: Follow up on phone conversation on 05-10-04

Dear Senator Leibham,

It has been more than thirty days since I last contacted you about the serious problems happening within the justice (just-us) system here in Manitowoc County. That was sent to you under Postal Certification # 7002-0860-0007-7739-2842. I incorporate that here by reference, with the same cause and effect as if stated here verbatim.

I know that you have provided me with another form to fill out against the court commissioner for Manitowoc County. That was again reiterated by your surrogate Brett in our conversation, but I fail to see what benefit the completion of another form will accomplish, when the responsible bodies; OLR, Judicial Commission and Supreme Court Chief Justice have already stated on paper that they cannot discern any mis- conduct and perform their duty to investigate. **SEE;** Copy of my 12-15-03 letter, attached.

Judging from the gist of our conversation Brett has the opinion that those bodies **alone** have jurisdiction to handle this matter. I have to respectfully disagree with that premiss. That is based upon a reading of the Wisconsin constitution, those specifically mentioned in previous letter incorporated by reference, and Article VII Sections 1, 11 and 13 which applies to the government and it's officials who take an oath to so uphold the laws and constitution.

The problem is not only caused by the court commissioner alone, there is a systematic collaboration of effort to cause great harm and distress to James Paul Theyerl. Mr Hazelwood could have averted the continuation of the first sham action of the DNR. Mr Deets started another sham action by providing a search warrant to the DNR for a book. I'm sure that Mr Deets knows that search warrants are reserved for objects used in the commission of a crime or other illegal contraband. Are books now made illegal thru the act of Mr Deets, I don't think so! Finally, Mr Willis was presented with the necessary notice of his lack of jurisdiction, and chose to do nothing but turn a blind eye and deaf ear to the situation. Allowing the court commissioners bogus default action to stand was a deliberate dereliction of duty. All of these efforts are being conducted outside the rule of law by Mark R. Rohrer and clerk of courts Joseph F. Bauknecht, with the "just-us" actors attempting to provide the enforcement under the masquerade of being lawful actions. And to cover up the masquerade that all actions presently presented to, and thru the courts of this state are seriously flawed, with the blessing of the bar association members who sit in judgment over people so deceived by the faulty process.

As I stated in the above referenced letter you received, I had hoped to excite some concern on your part, in regards to the total abrogation for the rule of law and thereby the elimination of two branches of state government. Apparently I didn't accomplish that! If that is a matter of fact, then the people who reside in what is generally recognized as Wisconsin, **do not** have a representative republic form of government.

Am I to conclude that you failed to present my concerns to the judicial committee chairs, as I demanded you do, since you made contact with me? I have not received any correspondence from either of them. To avert that situation again, they are being provided with a carbon copy. I want to know what is going to be done about this malicious conduct directed towards me? When will an investigation into this matter begin? When can I expect to see some positive steps taking place to prevent further acts of assault and intimidation from the conniving government actors under the pretense of lawful authority?

News coverage over the last several months suggests that the justice department state wide, top to bottom, needs to be examined and scrutinized more closely by the law making bodies of this state. Unlawful conduct is not confined to Kewaunee and Manitowoc Counties as evidenced by that coverage. It may be time for federal intervention into this situation, if nothing is done that meets with my approval.

This is the second and final notice, will be waiting five days for some positive response about this matter, I demand relief from this malicious prosecution of the "just-us" actors of the STATE, Kewaunee and Manitowoc Counties. No phone response will be accepted as a meaningful response. Thank You.

Sincerely,

CC. Committee chairpersons

Senator David A. Zien Senate Judiciary Chairman
Room 15 South State Capitol
P.O. Box 7882
Madison, WI 53707-7882
Postal Certification # 7002-0860-0007-7741-3752

Representative Mark Gundrum Assembly Judiciary Chairman
Room 19 North State Capitol
P.O. Box 8952
Madison, WI 53708-8952
Postal Certification # 7002-0860-0007-7741-3004

James Paul Theyerl
4123 CTH B
Manitowoc, Wi 54220

Office of the Clerk
PO Box 1688 Suite 215
100 E. Main Street
Madison, Wi 53701-1688
Postal certification # 7002-0860-0007-7741-2083

February 13, 2004

RE: Response to letter from Dawn Sturdevant Baum in regards to my notice of Misconduct of public officials in regards to # 04-FO-47.

Dear Ms Dawn Sturdevant Baum;

This letter is notice to you that I do not accept your response as one that was required of Chief Justice Shirley Abrahamson and as such, no answer of any meaningful consequence was made. The fact that you state that there is no matter pending before the Supreme Court that relates to me, therefore Justice Abrahamson had no reason to get involved, is a meaningless and lame excuse. From the general gist of the response provided, the Chief Justice merely wanted to distance herself from the problem of a sitting Justice being advised of felony misconduct, thereby directing the clerks office to offer a specious answer. Maybe there was some misconception as to the intent of my notice, but I suspect the chances of that being the true facts of the matter, are nil to none.

I would consider this to dispensing of legal advise, which employees of the clerks office are prohibited from doing. Whether or not you were directed to respond is irrelevant, no employee within the clerks office has any statutory authority to dispense of duties which are delegated nondiscretionary functions of a sitting Judge. If Indeed you were directed to answer under the direction of Justice Abrahamson, the effect remains the same. That effect is the person responsible for taking corrective action to allegations of felony misconduct has attempted to side step those responsibilities. In doing so has acquiesced and put a stamp of approval to felony misconduct

If what I have stated above is not the correct assessment of the matter, then Chief Justice Shirley Abrahamson should have little difficulty in correcting the errors of my assessment of conduct committed by Manitowoc County Public officials. That expertise should have been gained by the fact that Justice Abrahamson is an active participant in establishing those guidelines. The guidelines for commencement of any action within the public forum courts of this state are well established, and are mandatory upon public officials.

I will expect that you notify Justice Abrahamson how imperative it is that her personal response is expected. Justice Abrahamson has this **second opportunity** to lead the way in proving that this is a state that still operates under the principle that no public official can declare himself

above the law. The abrogation of that long standing principle will rapidly lead to anarchy, when officials are able to establish new law at his/her whim.

I incorporate here by reference to my first letter to Chief Justice Abrahamson that was received on February 5, 2004 with all supporting exhibits with the same cause and effect as if stated here verbatim. If those have been deposited in the clerks office, you are charged with the responsibility of forwarding them along with this second opportunity to respond and/or correct.

I will expect to receive notification within five days how you (Chief Justice Shirley Abrahamson) propose to proceed in regards to my affidavit for intentional felony misconduct by public officials. If no proposal is offered in the time noted I will conclude that there is no protection under the laws of this state for it's inhabitants. It is not my responsibility to prosecute public officials for public misconduct. If no response be forthcoming, I will be forced to address my concerns about lawlessness of public officials in a different venue.

Sincerely,

The Supreme Court of The state of Wisconsin
A Petition for redress: Article VII Section 3 (1)

The state of Wisconsin, ex rel. ,

James Paul Theyerl, relator

V.

Manitowoc County Circuit Court Judge

FRED H. HAZELWOOD, respondent

RECEIVED

Manitowoc County Case No 04-CV-489

Supreme Court Case File # _____

APR 20 2005

CLERK OF SUPREME COURT
OF WISCONSIN

SUMMONS TO ANSWER

The state of Wisconsin, To FRED H. HAZELWOOD named above as Circuit Court Judge in and for MANITOWOC COUNTY ;

You are hereby notified that the Relator, Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is included within petition, states the nature and basis for the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 110 Main Street, Suite 215 P.O. Box 1688 Madison Wisconsin. 53701-1688. Also provide a written response to James Paul Theyerl whose address is 4123 County Trunk B Manitowoc Wisconsin 54220 If you do not provide answer within 20 days, the Court may grant judgement against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgement may be enforced as provided by law. A judgement awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Prepared and signed on this 18th day of April 2005 by:

James Paul Theyerl auth Rep.
James Paul Theyerl, Relator Plaintiff
4123 County Trunk B
Manitowoc, WI 54220
920-682-6425

"I, Cornelia G. Clark, Clerk of the Supreme Court of the State of Wisconsin, Certify that I have compared the foregoing with the original document on file in my office and that it is a true and correct copy thereof."

Cornelia G. Clark

Clerk of the Supreme Court, State of Wisconsin.

April 20, 2005

Date

The Supreme Court of The state of Wisconsin
A Petition for redress: Article VII Section 3 (1)
The state of Wisconsin, ex rel. ,
James Paul Theyerl, relator

V

Manitowoc County Circuit Court Judge
FRED H. HAZELWOOD, respondent

Manitowoc County Case No 04-CV-489

This is a proceeding in this court upon petition of the state of Wisconsin ex rel: James Paul Theyerl; seeking a writ of mandamus directed to Hon. FRED H. HAZELWOOD, circuit judge in and for Manitowoc county, commanding the said circuit court judge to forthwith enter judgment in favor of the relator. Judgment sought is entry of a finding of default in accord with, and in conformity with procedural mandates and **Public Policy** statutes, and in harmony with the undisputed facts of 04-CV-489 as set forth herein.

STANDARD OF REVIEW

The parameters for issuance of a writ of mandamus are stated in the case *Collins v American Family Mut. Ins. Co.*, 153 Wis. 2d 477, 483-84, 451 N. W.. 2d.429 (1990);

1. The writ is based on a clear, specific legal right which is free from substantial doubt,
2. The duty sought to be enforced is positive and plain,
3. Substantial damage will result if the duty is not performed; and
4. There is no other adequate remedy at law.

ARGUMENT ON FIRST STANDARD

- 1A. Writ will issue from the Supreme Court when the Court secures sufficient facts from petition showing "probable cause" that the relator has a clear, specific legal right free from substantial doubt..

Quoting: *State ex rel. M. M. Cothren v Joseph Lean*. 12 Wis. 279 (1859) " *Applications for the writ are ex parte, and need only show a probable cause to allow it to be issued; but such allowance is not conclusive on the sufficiency of the application, and may be tested by a motion to quash*".

State ex rel Wisconsin P. & L., Co. v. Zimmerman 194 Wis 193, Page 196.

"for it is only when the duty is absolute and imposed by law upon a respondent that such writ should issue. *State ex rel. Fire & Rust Proof C. Co v Ickle*, 136 Wis. 583, 585, 586, 118 N. W. 196, 20 L. R. A. n. s. 800

1. The lower Court has secured personal jurisdiction over named parties, with insertion into the public record of 04-CV-489, the affidavit of personal service on November 11, 2004.
2. The imposition of law and corresponding duty of court official to perform is found in Wisconsin Statute 802.06 (1) to wit; "a defendant shall serve an answer within 45 days after service of the complaint upon the defendant" .
3. Relator, Plaintiff made an application to court official (after default) for an order to compel answer to complaint identified as 04-CV-489 on 12-28-2004 under authority of Wis Stat 802.01 (2).
4. Relator, Plaintiff supplied the Court with a statutory judicial notice of facts and law of this case (902.01 (2) (6) by affidavit, which accompanied the motion to compel a proper answer as required by Wisconsin Statute 802.01 (1).
5. Relator, Plaintiff managed to secure a hearing date for motion to compel an answer.

6. Relator, Plaintiff encounter staunch resistance in securing January 24, 2005 date for discussion of motion to compel an answer.
7. Respondent herein, denied Relator, Plaintiff's motion to compel answer on January 04, 2005; 20 days prior to scheduled hearing, without being moved (motioned) to do so.
8. Nothing appears of record in 04 CV-489, that the party defendant so moved the Court to dismiss motion to compel.
9. Respondent herein apparently accepted into instant case, hearsay evidence in direct conflict with 908.02.
10. The rules of pleading; Wisconsin Statute 802.01 (1) states that "there *SHALL* be a complaint and an answer.....No other pleadings *SHALL* be allowed, except that the Court *MAY* order a further pleading to a reply or to any answer".
11. The rules of pleading; Wisconsin Statute 802.01 (2) applications for an order *SHALL* be by motion.
12. The record of 04-CV- 489 shows that no formal application for such order was made through the Court by named party defendant, as required by Wisconsin Statute 802.01 (2).
13. The record of 04-CV- 489 provides no evidence that any public proceeding was had.
14. Wisconsin Statute 806.07 (1) " On motion and upon such terms as are just , the court, subject to subs. (2) (3), may relieve a party or representative from a judgment, order, or stipulation for any of the following reasons found in sub sections (a - h) ".
15. Wisconsin Statute 806.07 (2) " This section does not limit the power of

the court to entertain an independent action to relieve a party from judgment, order or proceeding, or set aside a judgment for fraud on the court.”

16. Relator, Plaintiff filed such “independent action” known as 04-CV-489 on October 05, 2004. Petition to vacate void judgments. Wisconsin Statute 806.07 (1) (d).
17. The current rules of civil procedure regarding commencement of action, pleadings, and evidence statutes are well established through legislative action and Supreme Court rulings.
18. Construction of Supreme Court Rules 99.01(14) *Mandatory or permissive actions*. The use of “SHALL” means an action is mandatory
19. It is clear from reading the civil procedure rules regarding commencement, pleadings, evidence statutes, and Supreme Court decrees, that legislative will and intent is free from ambiguity or reasonable doubt.
20. Any reasonable doubt about the rule making authority of the Supreme Court and the legislature was dispelled in *Mosen v. Hagen* 33 Wis. (2d) 636 (1967). *Constitutional law-Courts-Supreme court-Rules of practice promulgated pursuant to delegated power-Binding force and effect, almost since statehood the supreme court has recognized that its rules regulating practice before it and before the circuit courts are the law of the land and are binding upon all courts, officers, and parties until changed by the court or the legislature*”. p. 646.
21. Relator, plaintiff not only has a legal right to entry of default judgment, but also has a legal duty to seek the assistance of the court in securing its entry. SEE: 1A, 3, above
Quoting from *Neuhaus v. Clark County*, 14 Wis (2d) 222. Page 229 “ It was appellant’s duty to pursue their rights by applying to the court for a default

judgment within a reasonable time after failure of respondent to answer”.

1 B. Quoting from *State ex rel Wisconsin P. & L., Co. V Zimmerman* 194 Wis 193, Page 196 - 197. “ promptness in applying for such relief is stated to be one of the required conditions for its allowance in *State ex rel. Southern C. Co. V. Circuit Court*, 187 Wis. 1, 4, 203 N. W. 923, 48 A. L. R. 894, citing *State ex rel Milwaukee E. R. & L. Co v. Circuit Court*, 133 Wis. 442, 113 N. W. 722.”

22. Relator, Plaintiff did promptly request lower courts assistance to compel a proper answer to the complaint.

23. Relator, Plaintiff Is promptly requesting and petitioning this Superior Court under Wisconsin Court Rule 751.07 as well as Constitution for state of Wisconsin, Article VII Section 3, (1), Article 1, Section 9, for the issuance of writ of mandamus. The avenue of relief mentioned above was unlawfully foreclosed by the lower court official in this instant case.

1 C. Quoting from; *State ex rel Redenius v. Waggenson*, 140 Wis. 265. “It does not necessarily follow, because a person has a clear legal right which can only be effective by the act of another, that it is the clear duty of the latter to perform such act at the particular time and in the particular manner such person may demand it. **It is fundamental that both conditions must exist; the right and duty to act, before the extraordinary remedy can be successfully invoked.** *State ex rel. Pfister v Manitowoc*, 52 Wis. 423, 9 N. W. 607; *State ex rel. Board of Ed. v. Hunter*, 111 Wis. 582, 87 N. W. 485; *State ex rel. Wis. Met. Tel. Co v. Milwaukee*, 132 Wis. 615, 113 N. W. 40; *State ex rel. Rowe v. Krumenauer*, 135 Wis. 185, 115 N. W. 798; *State ex rel. Fire & Rust Proof Co. v. Icke*, 136 Wis. 583, 118 N. W. 196.

24. The act being requested by Relator, Plaintiff is that to compel performance of a mere

ministerial action by respondent public officer. See. Paragraphs 1A. 3 - 21 1B 22-23 above for specific set of facts constituting a mere ministerial act

25. The term " Ministerial action" is defined as follows in the State of Wisconsin; Code of ethics, at 19.42 (8)

"Ministerial action" means an action that an individual performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of the individual's own judgment as to the propriety of the action being taken"

26. The respondent public official prior to assumption of his office made a solemn promise to uphold and support all rules, statute laws, and constitutions of the state and national governments. EXHIBIT A

27. The respondent public official is in breach of that promised performance and as such has breached the public trust that the judicial office commands. SEE; SCR 60.04(1) (b)

28. State officers are not free to violate DUE PROCESS protections. SEE; *Neyland v. Vorwald*, 121 Wis. 2d 481, 488, 360 N. W. 2d. 537, 540 (Ct App. 1984) (citation omitted)
" Orders or Judgments entered contrary to due process are void".

29. The rules of Court ALONE enforce the RULE OF LAW.

- 1.D. Public officer's improper exercise of discretionary powers; Quoting from; *State v. Tronca*, 84 Wis. 2d 68 footnote, 14 *The conduct of Ryan was the exercise of a discretionary power in a manner inconsistent with the duties of his office.....*

30. Did the respondent public officer exercise discretion in a manner inconsistent with duties of the office he holds? The answer is YES.

31. Did the respondent public officer possess any discretionary authority to grant summary dismissal of suit (04-CV-489) filed by relator plaintiff? The answer is **NO**.

1.E. **The two preceding questions and the answers thereto**; are in accord with Supreme Court pronouncements within; *State ex rel. Department of Agriculture v. McCarthy*, 238 Wis. 258 . To wit; paragraphs 32-37 as follows:

32. The operation of a statute duly enacted by the legislature cannot be suspended by a court on the ground that the statute will work a hardship if enforced. p. 268.

33. Respondent, provides no reference (in order) about the creation of ANY hardship being placed upon named defendant of 04-CV-489 by simply providing a statutory answer to the complaint and complying with the statutory law.

34. Whether or not there shall be a law under which the legislature regulates the commencement, pleadings, and other provisions of a civil action in the public forum court, ***" is a matter wholly within the province of the legislature", and when a court undertakes to say that a law shall not be enforced, the court takes over the legislative function and in effect declares that the act of the legislature shall be suspended. p. 269.***

35. A judicial officer is required to administer a statute law without respect to persons **so long as the law is in force**, and any other course would constitute an infringement on the powers and functions of the legislature. Page 270.

36. The justice to be administered by the courts **is not an abstract justice as conceived of by the judge**, (summary dismissal) but justice "according to law" or, as phrased in Sec. 9, Art.I, Wisconsin Constitution , justice "conformably to the laws." p.270.

37. The summary dismissal ordered by lower Court official in this instant matter, amounts to

an abuse of judicial power. Page 270.

" It must be concluded that the grounds upon which the trial court acted did not constitute a sufficient or proper legal reason therefore and that this action constituted an abuse of judicial power".

38. The conduct (summary dismissal) by respondent official created a notable advantage for the named defendant of 04-CV-489 who violates the law.
39. The conduct of respondent official created a notable disadvantage for the relator who is only trying to follow the law as written, and attempting to gain a just remedy in accord with the law.
40. Relator, Petitioner has the reasonable expectation that COURT official be held to the same standard of adherence to the law, through fair and honest application of the law, invoking this Courts equitable jurisdiction.

Menzl.v Milwaukee (1966), 32 Wis. 2d 266, 145 N. W. 2d. 198, this court stated that mandamus was a discretionary writ and added, at pages 275, 276: " Mandamus is summary, drastic, and extraordinary writ issued in the sound discretion of the Court. Although classed as a legal remedy, mandamus is equitable in its nature and its issuance is generally controlled by equitable principles. The rights of the public and of third persons may be considered."
41. The respondent court official in this instant matter has not destroyed evidence as in *Dimond v. Henderson (1897), 47 Wis 172,175, 2 N. W. 73.* However,
42. The respondent court official is acting *willfully blind* to the only evidence of record in 04-CV-489, affidavits provided to the Court by relator plaintiff, is somewhat equal to the intentional destruction of evidence in *Dimond v. Henderson (1897), 47 Wis 172,175, 2 N. W. 73.,* when court official will not acknowledge existence of the evidence in record.

43. SCR 60.04 (1) (b) dictates that a judge SHALL be faithful to the law and maintain professional competence in it

ARGUMENT ON SECOND STANDARD

2. The duty sought to be enforced is positive and plain.
44. *THE RULE OF LAW WILL SURVIVE, NO PERSON OR ENTITY IS ABOVE THE WRITTEN LAW WITH UNFETTERED ABILITY TO SO VIOLATE.*
45. The will and intent of the people through legislative action, (Public Policy) and the Supreme Courts rule making authority will remain intact.
46. Injured parties will continue to have a venue (Public Court) where due process protections are upheld for all to witness.

ARGUMENT ON THIRD STANDARD

3. Substantial damage will result if the duty is not performed.
47. Relator, Plaintiff will suffer further damages over and beyond damages already inflicted by government actors under color of law proceedings. See CCAP document, EXHIBIT B.
Entry # 22 made on April 01, 2005
48. Financial damages inflicted by government actors through color of law acts is approaching \$ 2800.00 excluding time requirements to make defenses to frivolous non-suits.
49. Infliction of personal physician injury by armed mob assault, resulting in medical expenses approaching \$ 500.00 without lawful or legal (authority) process.

50. Relator, plaintiff fears that he will again suffer physical assault and court sanctioned act of compelled performance (payment of fees) in exchange for freedom, by mere existence of the actions which are subject matter of this instant action. Necessitating the proceeding identified as 04-CV-489. SEE: 47 above, and also this immediate petition.
51. A refusal to activate this Court supervisory jurisdiction will further erode public confidence and trust in the government generally, and in particular the judicial branch.
52. The RULE OF LAW will be abrogated by failure to amend conduct of lower court public officer.
53. The legislative enactments will be relegated to nothing more than meaningless chatter with no force or effect.
54. Supreme Court edicts and pronouncements will likewise be reduced to meaningless chatter.
55. Separation of powers in the three branches of government will no longer be discernable, and will in effect be dissolved, anarchy will soon ensue.
56. The conduct of the herein respondent is an infringement into legislative function of government which invokes this courts supervisory jurisdiction. SEE; *State ex rel Fourth Nat. Bank of Philadelphia v Johnson* (1899), 103 Wis. 591, 79 N. W. 1081: 51 L. R. A ; March 1941, Wisconsin Law Review, p. 153, The Power of Superintending Control of the Supreme Court, JOHN D. WICKHEM
57. The "legislative will" for the commencement, and pleadings statutes in Wisconsin (civil or criminal) will be relegated to the state of nothingness.
58. *Uniformity, consistency, and compliance with procedural rules are important aspects of*

the administration of justice. If the statutory prescriptions are to be meaningful, they must be unbending. Id. 519 Corporation v. State Department of Transportation, 92 Wis. 2d 276, 287, 284 N. W.2d 643, 649 (1979) strict adherence to the procedural provisions is required. id. at 288, 284 N. W.2d at 649.

59. Judicial tyranny will be established and judicially ratified, contrary to due process protections, and prior Supreme Court edicts.
60. “ We the people” (as a whole class) within the geographical boundaries commonly known as Wisconsin will be disenfranchised, and relegated to voiceless mimes without effect.
SEE: 56 above.
61. Relator finds not one positive result that could be obtained from this Court refusing to activate its supervisory jurisdiction over the lower court and compel compliance with the standards effectuated by and through duly elected representatives of the people in this state.

ARGUMENT ON FOURTH STANDARD

- 4 . There is no other adequate remedy at law.
62. **First and foremost,** **there is no valid order or judgment from which to appeal.**
Neyland v. Vorwald, 121 Wis. 2d 481, 488, 360 N. W. 2d. 537, 540 (Ct App. 1984)
(citation omitted) “ Orders or Judgments entered contrary to due process are void”.
63. Duty of public officer is written in the statutes. See: 1A, 10, 11, 18: 1D, 1E, above.
64. Abuse of discretion warrants no remedy other than mandamus. See: 1E, 37 above.

65. It is well settled that a writ of mandamus will issue to enforce the performance of plain imperative duties of a ministerial character. *See; State ex rel. West Allis v. Zawerschnik. (1957), 275 Wis. 204, 207, 81 N. W. (2d) 542; SEE ALSO: Paragraph 25 above.*
66. Duty sought to be performed is ministerial in character and the law requires entry without further superior appellant court action, at additional cost and effort of the relator, plaintiff, but further wasting of the public funds to compensate judicial employees to entertain unwarranted and unnecessary proceedings.
67. Duty sought to be performed is commanded by statutory law.
68. It is likewise well settled that mandamus is the proper remedy to compel public officers to perform clearly prescribed statutory duty. *See: State ex rel Martin v. Zimmerman. (1939), 233 Wis. 16, 288. N. W. 454; State ex rel. Ingold v. Mayor (1919), 170 Wis. 133, 174 N. W. 471.*
69. The writ issuance **will not** lead to inequitable results *See: State ex rel. Horton v. Brechler, 185 Wis. 599, 608, 202 N. W. 144.*
70. The named party defendant of 04-CV-489 in default, will not be foreclosed from stating its case to appellate court on error.
71. Relator, petitioner has no statutory duty to brief papers submitted in an untimely manner.
72. Relator, Plaintiff even if he would attempt such undertaking, would be faced with a legal impossibility. A maxim of law is that: "law or courts" cannot compel the impossible.
73. The named defendant of 04-CV-489 presented no statutory answer, naming specific issues of fact or law disputed in the complaint, leading to, and supporting the defense of

"Failing to state a claim upon which relief may be granted".

74. Granting writ will be in accord and harmony with:

Val-Lo-Will Farms, Inc., v. I. Azoff & Asso. 71 Wis. 2d 642 "On demurrer it is the duty of this court to accept the allegations of the complaint as true. A demurrer to a complaint admits all facts well pleaded, but denies that those facts have the legal consequences asserted by the plaintiff. When this court reviews a trial court's order on demurrer, it is obliged to construe the complaint liberally and to uphold it if it expressly or by 1 reasonable inference states any cause of action. Sec. 263.07, Stats., sec. 263.27; Estate of Mayer (1965), 26 Wis. 2d 671, 677, 133 N. W. 2d 322. See also: Weiss v. Holman (1973), 58 Wis. 2d 608, 614, 207 N. W. 2d 660.

75. No legal consequence exists other than being held in obedience to the law, such obedience to the law is a paramount element to the survival of a republic form of government. *State ex rel. Department of Agriculture v. McCarthy, 238 Wis. 258 . Page 268.*

" It is manifest from the return of the respondent that the only hardship that would be inflicted upon the defendants or any of them would be a requirement that they comply with the terms of the statute pending trial of the action."

76. Relator, plaintiff prays for issuance of writ of mandamus in his favor, and for such other and further relief as to the court may seem just and equitable.

Declaration

Twenty days from the verifiable receipt of this application for a writ of mandamus, the respondent shall submit to the Justices of The Wisconsin Supreme Court and the relator herein, a point by point rebuttal to following affidavit of probable cause. This demand for specific performance of the circuit court Judge is brought on by the Judges assumption of risk associated with 04-CV- 489. The Judge assumed that risk by failing to comply with the mandatory

AFFIDAVIT OF PROBABLE CAUSE

Page -14-

- means, that which can be obtained from CCAP, under the above cite,
4. The record reflects that on 10-05-04 a summons was presented for filing,
 5. The record reflects that on 10-05-04 a (certified)Verified petition accompanied the summons,
 - 6 Filing fee was paid 10-05-04 in the amount of \$ 117.00 not recorded as paid,
 7. Jurisdiction over the parties was completed by entry of certificate of service into the record, provided to the plaintiff by professional process server on November 18, 2004,
 8. Deadline for filing a responsive pleading was 12-05-04, as per Wis Stat 801.15 (1b),
 9. A motion to dismiss was filed a day later than permitted by the rules and by a non-party, and unverified by named defendant. Wis Stat 802.05 (1b)
 10. The commercial contract between all parties was consummated by entry of proof of service,
 11. The law of implied contract dictates that the judicial officer is to act as an impartial arbitrator of the facts in dispute,
 12. On 12-14-04 I; James Paul Theyerl, moved for judicial re assignment,
 13. On 12-16-04 FRED H HAZELWOOD signed an order denying judicial reassignment as untimely.
 14. FRED H HAZELWOOD demonstrated he can follow the statutes when he alone decides to follow them, and when they are not to the detriment of a fellow, and co-conspirator in misconduct,
 15. On 12-28-04 I; James Paul Theyerl moved for an order to compel an answer,
 16. On 12-28-04 a hearing date was set for January 24, 2005 at 8:30 AM in Circuit Court Br 3,
 17. FRED H HAZELWOOD signed an order denying motion to compel answer on 01-04-05 without any hearing, and without evidence to support decision entered,
 18. The record reflects entry of order denying motion to compel on 01-05-05,
 19. The record is silent about who so moved the court to deny, and on what basis of fact or law to so deny, the obvious conclusion or inference is that the Court acted alone,

- in disobedience to 802.01(2a)(b),
20. On 01-17-05 I; James Paul Theyerl moved the Court for default judgment, as a matter of law,
 21. Failing to hear from the Court about performance of his ministerial duty I; James Paul Theyerl, moved for summary judgment on 02-14-05,
 22. On 02-17-05 some sham proceeding was held without proper notice having been provided thru the public office, clerk of courts,
 23. Letter from FRED H HAZELWOOD dated January 20, 2005 again demonstrates the officials contempt for the rule of law, EXHIBIT C
 - A. Official admits to signing order without being moved to deny, without evidence in support, to negate affidavits presented to court with motion to compel and summary judgment motion,
 - B. Official has moved into legislative arena by his declaration that the defendant is excused from answering the complaint,
 - C. Court officials declaration effectively foreclosed the remedy duly established by the legislature for any aggrieved party (not just this relator) of this state. Wisconsin Statute 806.07 (1) (d) declared into non-existence by an officer of the court.
 24. Relator, plaintiff is not aware of any facts or pending legislation leading to the repeal, modification of, reversal of the current legislative rules and Supreme Court decrees identified herein..

The above documents were,

Signed this 18th Day Of April 2005 by

James Paul Theyerl auth Rep.

James Paul Theyerl Relator, Plaintiff

4123 CTH B

Manitowoc, WI 54220

920-682-6425

The undersigned Notary for the State of Wisconsin did have this person subscribe and swear to the validity of his statement before me, and did affix his signature to this document in my presence on this 18th day of April 2005 AD.

Bonnie M Peroutka 4-18-05

Notary Public

Date

Manitowoc

County of Venue

Manitowoc 11-12-2006

County

Exp. Date



Wisconsin Circuit Court Access from CCAP

State of Wisconsin vs. James P. Theyerl

Manitowoc County Case Number 2004FO000047
Court Record Events

	Date	Event	Court Official	Court Reporter
1	01-22-2003	Admission of service		
2	01-12-2004	Complaint filed Additional Text RE: Troll without sports trolling license.		
3	01-14-2004	Subpoena		
4	01-15-2004	Affidavit Additional Text Affidavit of service		
5	01-16-2004	Notice Additional Text Notice and demand for a continuance from scheduled date of 1-21-04 at 11:15 a.m. to 95 days past 1-12-04.		
6	01-20-2004	Order Additional Text Order denying request for continuance.	Willis, Patrick L.	Tesheneck, Diane
7	01-21-2004	Adjourned initial appearance Additional Text No appearance by defendant. D.A. Mark Rohrer appearing. State files an amended summons for the defendant to appear on 2-18-04 at 11:15 a.m.	Koppa, Patricia A.	Keil, Debra
8	01-21-2004	Judicial transfer	Willis, Patrick L.	Tesheneck, Diane
9	02-17-2004	Return of unclaimed/undelivered mail service Additional Text NEJ and OFIND returned unopened by post office addressed to Gary Lefebber-Elonen.		
10	02-17-2004	Other papers Additional Text Judicial Notice of Motion to dismiss with support affidavit included.		
11	02-17-2004	Other papers Additional Text Brief in support of Motion and Order for Dismissal of non suit.		
12	02-17-2004	Affidavit		

Wisconsin Circuit Court Access from CCAP

	Date	Event	Court Official	Court Reporter
13	02-18-2004	Intake Additional Text No appearance by defendant. Count 1 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 2 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 3 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 4 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 5 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 6 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 7 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 8 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 9 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 10 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 11 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. Count 12 - Guide without sport trolling license - Defaulted. \$1,000.00 forfeiture plus costs, total \$2,109.00 to be paid by 3-19-04. State also moves for suspension of all Chapter 29 approvals per count for three years. Court grants suspension.	Koppa, Patricia A.	Keil, Debra
14	02-18-2004	Default judgment entered	Willis, Patrick L.	
15	02-18-2004	Dispositional order/judgment	Willis, Patrick L.	
16	03-05-2004	Transcript Additional Text Transcript of Initial appearance.		
17	08-17-2004	Amended judgment of conviction		
18	09-01-2004	Commitment issued Event Party(s) Theyerl, James P. Additional Text Order for Arrest and Commitment on Failure to Pay forfeiture and costs issued on Count 1. Defendant to be committed to the county jail until forfeiture and costs have been paid, not to exceed forty-two (42) days.	Willis, Patrick L.	Amount \$ 0.00
19	09-03-2004	Warrant/Capias/Commitment canceled Event Party(s) Theyerl, James P. Additional Text \$2,109.00 forfe plus costs paid per commitment in count 1.		
20	09-08-2004	Hearing Additional Text Defendant requested a hearing before the Court. State informs the court that the defendant was defaulted on all counts. Court explains to the defendant that unless payment arraignments are made or other action taken, more commitments will be issued. Court will give the defendant thirty (30) days before any more action is taken.	Willis, Patrick L.	Tesheneck, Diane

Wisconsin Circuit Court Access from CCAP

	Date	Event	Court Official	Court Reporter
21	09-09-2004	Transcript Additional Text Transcript of hearing on 9-8-04.		
22	04-01-2005	Commitment issued Event Party(s) Theyerl, James P. Additional Text Order for Arrest and Commitment on Failure to Pay forfeiture and costs issued on count two (2). Defendant to be committed to the county jail until forfeiture and costs have been paid, not to exceed forty-two (42) days.	Willis, Patrick L.	Tesheneck, Diane
			Amount \$ 2109.00	

FRED H. HAZLEWOOD, CIRCUIT JUDGE



CIRCUIT COURT
BRANCH III

MANITOWOC COUNTY COURTHOUSE
1010 SOUTH 8th STREET, BOX 2000
MANITOWOC, WISCONSIN 54221-2000

MARY ZELLNER
JUDICIAL ASSISTANT
PHONE (920) 683-4022

JENNIFER K. HAU
REPORTER
PHONE (920) 683-4084

January 20, 2005

Attorney Charles D. Hoornstra
Assistant Attorney General
17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857

-and-

Mr. James P. Theyerl
4123 CTH B
Manitowoc, WI 54220

Gentlemen:

RE: THEYERL -vs- ROHRER, et al
Case No. 04 CV 489

I have scheduled a hearing for the State's motion to dismiss the complaint and to impose costs as a sanction for February 17, 2005 at 3:00 p.m.

Each of you is aware that the court has signed an order denying the plaintiff's motion to compel an answer to the complaint. Under the statute, while the motion to dismiss is pending, the State is not required to respond to the complaint. Therefore, there is no point in hearing any further motions filed by Mr. Theyerl that rely on the State answering the complaint.

Very truly yours,


Fred H. Hazlewood
Circuit Judge

FHH/mz

CV 489-17 C

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

JAMES P. THEYERL

Plaintiff,

vs.

Case # 04-CV-0489

MARK ROHRER, DBA
STATE OF WISCONSIN,

Defendants.

ORDER DENYING MOTION TO COMPEL

Plaintiff's motion to compel an answer to the complaint having come before the court for consideration; the defendant having previously moved to dismiss; that motion to dismiss still being pending; the court holds that the filing of the motion to dismiss tolled the time to answer. Wis. Stat. § 802.06(1). Therefore, IT IS ORDERED, that the motion to compel is denied.

Dated this 7 day of January, 2005.

BY THE COURT:

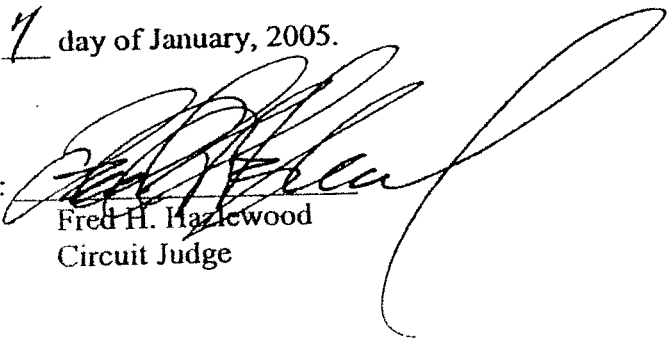

Fred H. Hazlewood
Circuit Judge

EXHIBIT C

Upon Montrose County Circuit Court Judge

Fred H. Hazelwood

1010 S. 8th St.

Montrose, CO 81402

4/21/05

3:00 p.m.

9/21